

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

Order No.: SF-05-007

DAVIDSON TRUST CO.,)
Great Falls, Montana.)

Date: August 12, 2005

OTS Docket No.: 16693)
_____)

**STIPULATION AND CONSENT TO THE ISSUANCE OF AN AMENDED
ORDER TO CEASE AND DESIST AND FOR AFFIRMATIVE RELIEF**

WHEREAS, on April 26, 2004, the Office of Thrift Supervision (OTS) issued an Order to Cease and Desist and For Affirmative Relief, Order No. SF-04-003 (Order), to DAVIDSON TRUST CO., Great Falls, Montana, OTS Docket No. 16693 (DAVIDSON TRUST), pursuant to 12 U.S.C. § 1818(b);¹ and

WHEREAS, pursuant to a Reservation of Rights contained in the Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief dated April 26, 2004 (Original Stipulation) incorporated by reference into the Order, the OTS now seeks to amend the Order; and

WHEREAS, DAVIDSON TRUST desires to cooperate with the OTS and to avoid the time and expense of an administrative proceeding to amend the Order; and

¹ All references to the United States Code (U.S.C.) are as amended, unless otherwise indicated.

WHEREAS, DAVIDSON TRUST enters into this Stipulation and Consent without any adjudication on the merits, without admitting or denying that grounds exist to initiate an administrative cease and desist proceeding, without admitting or denying the Findings of Fact as they appeared in the Original Stipulation and as they are repeated herein, except as to Jurisdiction per paragraph 1 below, which jurisdiction is admitted, and solely for the purpose of settling this matter in accordance with Rule 408 of the Federal Rules of Evidence and equivalent state provisions;

NOW, THEREFORE, on these premises, DAVIDSON TRUST hereby stipulates and agrees as follows:

1. Jurisdiction.

(a) DAVIDSON TRUST is a “savings association” within the meaning of 12 U.S.C. § 1813(b), and 12 U.S.C. § 1462(4). Accordingly, it is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c).

(b) Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the “appropriate Federal Banking agency” to maintain an administrative cease and desist proceeding against such a savings association. Therefore, DAVIDSON TRUST is subject to the jurisdiction of the OTS to initiate and maintain a cease and desist proceeding against it pursuant to 12 U.S.C. § 1818(b). The Director of the OTS has delegated to the Regional Director of the West Region of the OTS or his/her designee (Regional Director) the authority to issue cease and desist orders where the institution has consented to the issuance of the orders.

2. OTS Findings of Fact. As previously set forth in the Original Stipulation dated April 26, 2004, OTS finds, that, prior to January 2003, DAVIDSON TRUST:

(a) Allowed a custodial account to engage in "Late Trading" of mutual fund shares in contravention of the requirements of applicable forward pricing regulations. Such trading ended at the direction of DAVIDSON TRUST in January 2003. Late Trading refers to the practice of permitting a purchase or redemption order received after the calculation of that day's net asset value (NAV), typically 4:00 p.m. Eastern Time, to receive that day's NAV share price;

(b) Allowed a custodial account to engage in "Market Timing" activities relating to mutual fund shares traded through DAVIDSON TRUST. Market Timing refers to the practice of buying and selling mutual fund shares over the short term to exploit potential pricing inefficiencies in a manner that is contrary to the stated policies of the individual mutual funds as set forth in their respective prospectuses; and

(c) Failed to put in place adequate policies and procedures and systems reasonably designed to ensure DAVIDSON TRUST's compliance with all applicable requirements for securities transactions, including, but not limited to, the Record Keeping and Confirmation Requirements for Security Transactions set forth in Part 551 of the OTS Rules and Regulations, 12 C.F.R. § 551 et seq.

As a consequence, DAVIDSON TRUST failed to prevent violations of laws, rules and regulations.

3. **Consent.** DAVIDSON TRUST consents to the issuance by the OTS of the accompanying Amended Consent Order to Cease and Desist and For Affirmative Relief (Amended Order). It further agrees to comply with the terms of the Amended Order upon issuance and stipulates that the Amended Order complies with all requirements of law.

4. **Finality.** The Amended Order is issued under 12 U.S.C. § 1818(b). Upon its issuance by the Regional Director or his/her designee for the West Region, OTS, it shall be a

final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C.

§ 1818(i).

5. **Waivers.** DAVIDSON TRUST waives the following:

- (a) the right to be served with a written notice of the OTS's charges against it as provided by 12 U.S.C. § 1818(b);
- (b) the right to an administrative hearing of the OTS's charges against it as provided by 12 U.S.C. § 1818(b);
- (c) the right to seek judicial review of the Amended Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Amended Order;
- (d) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, the Equal Access to Justice Act, 5 U.S.C. § 504, or 28 U.S.C. § 2412; and
- (e) the right to assert this proceeding, its consent to the issuance of the Amended Order or the issuance of the Amended Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity.

6. **Other Governmental Actions Not Affected.** DAVIDSON TRUST acknowledges and agrees that the consent to the issuance of the Amended Order is for the purpose of fully and finally resolving between the OTS and DAVIDSON TRUST all enforcement matters arising from the Findings of Fact set forth in paragraph 2 and does not release, discharge, compromise,

settle, dismiss, resolve, or in any way affect any actions, charges against or any other proceeding that may be or has been brought by any other governmental entity other than the OTS.

7. Miscellaneous.

- (a) The construction and validity of this Stipulation and the Amended Order shall be governed by the laws of the United States of America;
- (b) All references to the OTS in this Stipulation and the Amended Order shall also mean any of the OTS's predecessors, successors, and assigns;
- (c) The section and paragraph headings in this Stipulation and the Amended Order are for convenience only and shall not affect the construction hereof; and
- (d) This Stipulation and the Amended Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director, Regional Director, or other authorized representative.

WHEREFORE, DAVIDSON TRUST CO., through its duly authorized representative, executes this Stipulation and Consent to the Issuance of an Amended Order to Cease and Desist and For Affirmative Relief, intending to be legally bound hereby.

DAVIDSON TRUST CO.

OFFICE OF THRIFT SUPERVISION

By: /S/
Arthur P. Sims
President
Davidson Trust Co.
As Authorized

/S/
Edwin L. Chow
Deputy Regional Director, West Region
Acting for the Regional Director
Pursuant to OTS West Region Order
No. SF-05-004

Dated: 8-12-05

Dated: 8/12/05

(Davidson Trust CD Amended Stip3 c:\davidson trust)

DAVIDSON TRUST CO.
STIP TO AMENDED C&DAFFIRM RELIEF

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)	Order No.: <u>SF-05-007</u>
)	
DAVIDSON TRUST CO.,)	Date: <u>August 12, 2005</u>
Great Falls, Montana.)	
)	
OTS Docket No.: 16693)	
)	

**AMENDED CONSENT ORDER TO CEASE AND
DESIST AND FOR AFFIRMATIVE RELIEF**

WHEREAS, DAVIDSON TRUST CO., Great Falls, Montana, OTS Docket No 16693 (DAVIDSON TRUST or Association), by and through its Board of Directors (Board), has executed a Stipulation and Consent to the Issuance of an Amended Order to Cease and Desist and For Affirmative Relief (Stipulation);

WHEREAS, DAVIDSON TRUST, in the Stipulation, has consented and agreed to the issuance of this Amended Consent Order to Cease and Desist and For Affirmative Relief (Amended Order) pursuant to 12 U.S.C. § 1818(b);¹ and

WHEREAS, the Director of the Office of Thrift Supervision (OTS) has delegated to the Regional Directors of the OTS the authority to issue Orders to Cease and Desist on behalf of the OTS where the Association has consented to the issuance of the Order;

¹ All references to the United States Code (U.S.C.) are as amended, unless otherwise indicated.

NOW THEREFORE, IT IS ORDERED THAT the Consent Order to Cease and Desist and For Affirmative Relief, No. SF-04-003, dated April 26, 2004 (Order), is hereby amended to include the following provision:

IT IS FURTHER ORDERED THAT:

1. Within thirty (30) days from effective date of this Amended Order, DAVIDSON TRUST shall present to the OTS an accounting acceptable to the OTS relating to the customer relationship referred to in the Findings of Fact of the Stipulation.
2. Within sixty (60) days from the effective date of this Amended Order or thirty (30) days after the OTS deems the accounting acceptable, whichever is later, DAVIDSON TRUST shall present to the OTS a plan of distribution for investor education acceptable to the OTS.
3. Within seven (7) days of the OTS approval of the plan of distribution, DAVIDSON TRUST shall comply with the approved plan and shall submit evidence to the OTS, in a form agreeable to the OTS, that the plan of distribution has been fully implemented.

MISCELLANEOUS

1. **Effective Date.** This Amended Order is and shall become effective on the date it is issued, as shown in the caption hereof. The Stipulation and the Amended Order shall remain in effect until terminated, modified or suspended, in writing by the OTS, acting through its Director, Regional Director or other authorized representative. DAVIDSON TRUST has the right to request termination, modification, or suspension of the Amended Order.
2. **Notices.** Any notice, report or request for supervisory approval required to be made to the OTS by this Order shall be provided in writing to:

Regional Director
Office of Thrift Supervision
Department of the Treasury
2001 Junipero Serra Boulevard, Suite 650
Daly City, California 94014
Fax: (650) 746-7001

3. **Time Limits.** Time limitations for compliance with the terms of this Amended Order run from the Effective Date, unless otherwise noted.

4. **Effect of Headings.** The section and paragraph headings herein are for convenience only and shall not affect the construction hereof.

5. **Separability Clause.** In case any provision in this Amended Order is ruled to be invalid, illegal or unenforceable by the decision of any court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his sole discretion determines otherwise.

6. **No Violations Authorized; OTS Not Restricted.** Except as set forth in paragraph 6 of the Stipulation, nothing in this Amended Order or the Stipulation shall be construed as:
(i) allowing DAVIDSON TRUST to violate any law, rule, regulation, or policy statement to which it is subject, or (ii) restricting or estopping the OTS from taking any other action(s) that it believes are appropriate in fulfilling the responsibilities placed upon it by law.

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7. Incorporation.

(a) The Stipulation is made a part hereof and is incorporated herein by this reference.

(b) Paragraph 7 of the Stipulation dated April 26, 2004 is hereby terminated.

(c) Except as expressly amended hereby, the provisions, terms, and conditions of the Order are unchanged and shall remain in full force and effect.

OFFICE OF THRIFT SUPERVISION

By: Edwin L. Chow
Deputy Regional Director, West Region
Acting for the Regional Director
Pursuant to OTS West Region Order
No. SF-05-004